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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 BIRDDOG TECHNOLOGY LIMITED,
12 an Australian company; and BIRDDOG
13 AUSTRALIA PTY LTD, an Australian
company,

14 Plaintiffs,

15 v.

16 2082 TECHNOLOGY, LLC DBA
17 BOLIN TECHNOLOGY, a California
limited liability company; BOLIN
18 TECHNOLOGY CO., LTD., a Chinese
limited company; HOI “KYLE” LO, an
individual; JENNIFER LEE, an
19 individual; and DOES 3 through 25,
inclusive,

20 Defendants.
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Case No. 2:23-cv-09416 CAS (AGRx)

**REPLY IN SUPPORT OF
DEFENDANT JENNIFER LEE’S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

Hearing Date: March 11, 2024
Time: 10:00 a.m.
Judge: Hon. Christina A. Snyder
Courtroom: 8D

*[Response to Plaintiffs’ Opposition to
Jennifer Lee’s Request for Judicial
Notice Filed Concurrently Herewith]*

Complaint filed: November 7, 2023
FAC filed: January 12, 2024

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Plaintiffs’ Opposition (the “Opposition” or “Opp.”) to Jennifer Lee’s Motion
3 to Dismiss (the “Motion”) continues a trend already evident from the beginning of
4 this lawsuit. Faced with Ms. Lee’s Motion, Plaintiffs’ theory has shifted yet again.
5 Now, Plaintiffs argue that Ms. Lee is liable as a “co-conspirator” of all Defendants
6 generally. This new argument – which is not based on any theory actually pleaded
7 in Plaintiffs’ First Amended Complaint (“FAC”) – cannot save Plaintiffs’ otherwise
8 legally insufficient claims.

9 As explained in the Motion, Plaintiffs’ initial Complaint named only 2082
10 Technology, LLC (“2082”) and Hoi “Kyle” Lo as Defendants. After 2082 and Mr.
11 Lo filed a motion to dismiss and presented the Court with judicially noticeable
12 documents demonstrating that the alleged contracts at issue were entered into with
13 Bolin Technology Co., Ltd. (“Bolin China”), and not 2082, Plaintiffs filed their
14 FAC. The FAC added Bolin China and Ms. Lee to the case, added newly
15 conceived trade secrets claims, and alleged that 2082, Bolin China, and Mr. Lo are
16 the alter egos of one another. (Ms. Lee is not alleged to be an alter ego of either
17 2082 or Bolin China.) Notably, Plaintiffs made these amendments not based on
18 any new facts that had come to light since the filing of the initial Complaint just
19 two months earlier, but in a thinly veiled attempt to manufacture a basis to maintain
20 claims against 2082, Mr. Lo, and now Ms. Lee.

21 Now, in the face of Ms. Lee’s Motion establishing that there is no basis for
22 any of the claims brought against her – all of which are insufficient to state a claim
23 as a matter of law – Plaintiffs for the first time argue that Ms. Lee was a “co-
24 conspirator” with all Defendants and that they seek to hold her liable on this basis.
25 *See, e.g.,* Opp. at 6:3-8, 7:27-8:1, 8:9-11, 11:3-13:11. This newly concocted theory
26 is a distraction and fails for a very basic reason: no such “conspiracy” is alleged in
27 the FAC. Indeed, the word “conspiracy” is only mentioned twice in the FAC and
28 both times it is vague, non-specific, and related solely to Plaintiffs’ claim for

misappropriation of trade secrets under the Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1832, *et seq.* Not only is conspiracy liability not available under the DTSA as a matter of law, as explained below, but also there are no other allegations in the FAC of a conspiracy involving Defendants – including Ms. Lee – to do any of the acts now being argued by Plaintiffs in their Opposition. It is noteworthy that Plaintiffs did not raise this argument in their Opposition to 2082’s and Mr. Lo’s pending motion to dismiss. The theory is nothing more than an afterthought and is not based on the operative pleading before the Court. More important, it underscores the utter lack of a viable claim alleged against Ms. Lee.

As further discussed below, Plaintiffs’ claims against Ms. Lee fail on several grounds. First, Plaintiffs fail to allege their claims consistent with Federal Rule of Civil Procedure 8 and, where applicable, with the particularity required by Rule 9(b). The FAC also fails because Plaintiffs improperly attempt to turn this contract case into a tort action by recasting their breach of contract allegations against Bolin China and 2082 as purported conversion and intentional interference by Ms. Lee. Plaintiffs’ attempt to dispute this in their Opposition ignores relevant authority and their own allegations.

No matter how Plaintiffs attempt to plead and re-plead their claims, those claims are both insufficient and implausible as a matter of law. Accordingly, Ms. Lee requests that the Court dismiss all of Plaintiffs’ claims for relief against her.

II. ARGUMENT

A. The FAC Fails to State Any Claim for Relief Against Ms. Lee.

1. Plaintiffs’ Argument That the FAC Pleads a “Conspiracy” Is Both Incorrect and Unavailing.

In their Opposition to the Motion, Plaintiffs all but concede that the FAC does not plead individual claims against Ms. Lee, instead arguing that the claims against her should survive because she was allegedly engaged in a “civil conspiracy” with all Defendants. Opp at 11:3-13:11. Putting aside that this

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1 argument is based on the fabricated premise that there was an alleged wide-ranging
 2 conspiracy to wrong Plaintiffs – despite an acknowledged years-long relationship
 3 between Bolin China and BirdDog Australia – it is not even alleged in the FAC.
 4 Indeed, the term “conspiracy” appears only twice in the FAC, and those two
 5 allegations are limited to Plaintiffs’ claim for misappropriation of trade secrets
 6 under the DTSA. *See* FAC ¶¶ 92-93. As discussed more fully below, conspiracy
 7 allegations cannot support a DTSA claim as a matter of law. Rather, the law
 8 requires pleading individual misappropriation by the person against whom the
 9 claims are brought. Plaintiffs do not include any other conspiracy allegations
 10 anywhere else in the FAC. In fact, the conspiracy allegations included as part of
 11 Plaintiffs’ DTSA claim are expressly *not* incorporated and not relied on as part of
 12 Plaintiffs’ non-trade secret claims. *See id.* ¶¶ 104, 108, 112, 117, 121, 127
 13 (incorporating earlier paragraphs in the FAC “except for paragraphs 84-103,
 14 inclusive, including the misappropriation of trade secrets . . .”).

15 Because conspiracy is not alleged in the FAC, as would be required to state a
 16 claim thereon, this new argument cannot save Plaintiffs’ claims against Ms. Lee.
 17 The essential elements required to support a conspiracy theory would have to be
 18 alleged in the FAC – which they are not. “The elements of a conspiracy claim are
 19 the formation and operation of the conspiracy and damage resulting to [a] plaintiff
 20 from an act or acts done in furtherance of the common design.” *Murphy v. Am.*
 21 *Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1287-88 (C.D. Cal. 2015), quoting *Applied*
 22 *Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 511 (1994). “A claim of
 23 conspiracy requires that ‘two or more persons agree to perform a wrongful act.’”
 24 *Id.* at 1288 (holding that “the SAC does not sufficiently allege the formation of the
 25 conspiracy” where, *inter alia*, “[t]here are no allegations concerning when or where
 26 such a conspiracy was conceived” and “[t]here are no allegations concerning who . .
 27 . conceived of, entered into or carried out the conspiracy”), quoting *Wyatt v. Union*
 28 *Mortgage Co.*, 24 Cal.3d 773, 784 (1979).

1 Plaintiffs' FAC is devoid of the necessary allegations. Among other things,
 2 the FAC does not allege facts as to when the alleged conspiracy was conceived, nor
 3 facts suggesting which parties conceived of the alleged conspiracy and entered into
 4 this alleged conspiracy. Plaintiffs also do not allege which of their claims are
 5 predicated on an alleged conspiracy involving Ms. Lee (or anyone else) as opposed
 6 to any direct liability against Ms. Lee.

7 Moreover, not only are Plaintiffs required to plead an alleged conspiracy to
 8 the extent they intend to pursue this theory against Ms. Lee, but also the facts
 9 supporting the alleged conspiracy must be alleged with specificity under Rule 9(b).
 10 "Conspiracy claims grounded in fraud must identify 'the who, what, when, where,
 11 and how of the misconduct charged'" as required by Rule 9(b). *Ajzenman v. Off. of*
 12 *Comm'r of Baseball*, 487 F. Supp. 3d 861, 867 (C.D. Cal. 2020), quoting *United*
 13 *States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th
 14 Cir. 2011).¹ See e.g., *id.* at 868 ("Plaintiffs fail to sufficiently allege that any
 15 conspiracy existed among the Defendants. Most of the allegations stated above are
 16 vague and follow the insufficient 'everyone did everything' type allegations."). In
 17 *Swartz v. KPMG LLP*, 476 F.3d 756 (9th Cir. 2007), the Ninth Circuit rejected
 18 conspiracy allegations as insufficient to survive a motion to dismiss where the
 19 complaint "failed to sufficiently detail the roles played by the defendants in the
 20 alleged conspiracy to defraud," and where specific conduct was attributed to only
 21 some of the defendants with conclusory allegations that the others knew of the
 22 misconduct and were "'active participants in the conspiracy' without any stated
 23 factual basis." *Id.* at 765.

24 Although the FAC conclusorily alleges that Defendants collectively
 25 repudiated the alleged contracts, and allegedly stole Plaintiffs' money, all of which
 26 allegedly interfered with Plaintiffs' relationship with third parties, the FAC does not

27
 28 ¹ Plaintiffs' claims are most certainly grounded in fraud, as explained more fully in
 the Motion and in Section II.A.3, below.

1 allege a specific “conspiracy,” much less specify with supporting factual allegations
 2 Ms. Lee’s alleged role as part of this purported “scheme.” These kind of “vague . .
 3 . ‘everyone did everything’ type allegations” are routinely rejected by courts on a
 4 motion to dismiss. *See Ajzenman*, 487 F. Supp. 3d at 868.

5 **2. The Third and Fourth Claims for Trade Secret Violations** 6 **Fail to State a Plausible Claim Against Ms. Lee.**

7 Plaintiffs contend that the allegations in their FAC adequately delineate
 8 between the four defendants with respect to Plaintiffs’ trade secret claims and argue
 9 that Ms. Lee’s reliance on *Physician’s Surrogacy, Inc. v. German*, No. 17cv718-
 10 MMA (WVG), 2018 WL 638229 (S.D. Cal. Jan. 31, 2018) and *Vendavo, Inc. v.*
 11 *Price f(x) AG*, No. 17-cv-06930-RS, 2018 WL 1456697 (N.D. Cal. Mar. 23, 2018)
 12 is misplaced. Opp. at 14:5-21. Not so. As noted in the Motion, and as Plaintiffs
 13 themselves acknowledge in their Opposition, Plaintiffs’ FAC alleges in only
 14 conclusory fashion that “all Defendants” acquired Plaintiffs’ “Trade Secrets” by
 15 improper means and used and disclosed these allegedly misappropriated trade
 16 secrets. *See, e.g.*, FAC ¶¶ 63, 92, 93, 101.

17 Plaintiffs also now point to additional allegations, but these allegations
 18 similarly and ambiguously group the Defendants together, and similarly fail to
 19 identify what trade secrets were allegedly misappropriated, referring only vaguely
 20 to the fact that Mr. Miall met with Ms. Lee and Mr. Lo and that he gave them and
 21 the “Bolin Defendants” “sensitive confidential and proprietary information . . .
 22 including some BirdDog Trade Secrets.” *See* Opp. at 14:25-15:4, citing FAC ¶¶ 42,
 23 48, 51. Plaintiffs are required to support their claim against Ms. Lee with
 24 allegations that she personally misappropriated specific trade secrets. *See Vendavo*,
 25 2018 WL 1456697, at *4. They fail to do so.²

26 ² Plaintiffs’ trade secret claims are based, at least in part, on an alleged non-
 27 disclosure agreement (“NDA”). *See* Opp. at 8 (arguing the parties signed an NDA
 28 and started an economic relationship based on Mr. Lo and Ms. Lee’s alleged
 representations); *see also* FAC ¶ 37 (alleging the existence of an NDA which binds
 Ms. Lee and the other Defendants). It is notable that Plaintiffs do not attach to the
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1 Plaintiffs attempt to salvage their trade secrets claims by arguing, for the first
 2 time in response to the Motion, that they are not required to differentiate between
 3 the various Defendants, including Ms. Lee, because the FAC alleges a “conspiracy”
 4 between all Defendants to misappropriate trade secrets. *See Opp.* at 13:15-16, 14:5-
 5 7. This argument can be rejected out of hand. It is well established that the DTSA
 6 does not allow a private civil cause of action for conspiracy to misappropriate trade
 7 secrets. *See Arthur J. Gallagher & Co. v. Tarantino*, No. 20-CV-05505-EMC,
 8 2022 WL 4092673, at *18 (N.D. Cal. July 27, 2022) (granting motion to dismiss
 9 conspiracy to misappropriate trade secrets under DTSA because “conspiracy
 10 liability is not expressly provided for in Section 1832” and “while Section 1836
 11 allows for a private cause of action, courts have uniformly found that stand-alone
 12 conspiracy claims are unavailable under this section”); *Genentech, Inc. v. JHL*
 13 *Biotech, Inc.*, No. C 18-06582 WHA, 2019 WL 1045911, at *12 (N.D. Cal. Mar. 5,
 14 2019) (“Genentech cites no authority suggesting that Section 1836(b) of the DTSA
 15 provides for a stand-alone private action for conspiracy to misappropriate trade
 16 secrets”); *Fishbaugh v. Bulgadarian*, No. 2:20-CV-01135-JWH-RAOx, 2021 WL
 17 3598579, at *4 (C.D. Cal. July 8, 2021) (“Fishbaugh argues that conspiracy liability
 18 is not available under the DTSA. [citation omitted]. The Court agrees with
 19 Fishbaugh on this point.”). *See also Broidy Cap. Mgmt. LLC v. Muzin*, No. 19-CV-
 20 0150 (DLF), 2020 WL 1536350, at *13 (D.D.C. Mar. 31, 2020), *aff’d*, 12 F.4th 789
 21 (D.C. Cir. 2021) (“To the extent that the Complaint alleges secondary liability as
 22 well [under the DTSA], that theory of liability is unavailable for a civil action . . .
 23 The Court will not permit defendants to advance this theory going forward, and
 24 they must prove that each defendant individually misappropriated at least one trade
 25 secret.”).

26 Thus, to the extent Plaintiffs are relying on their “conspiracy” allegations for
 27 FAC a copy of the alleged NDA for the Court to review. Plaintiffs also do not
 28 allege that the NDA is governed by California law or any other laws of the United
 States.

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1 liability against Ms. Lee to misappropriate trade secrets under the DTSA, this claim
 2 fails. Plaintiffs must allege that each Defendant individually misappropriated and
 3 used Plaintiffs' alleged trade secrets. They do not do so.

4 In her Motion, Ms. Lee also established that Plaintiffs fail in the FAC to
 5 sufficiently identify their trade secrets. In response, Plaintiffs argue that they do not
 6 need to "spell out the details" of their alleged trade secrets and contend that their
 7 allegations have put Ms. Lee "on notice of what the theft is about." Opp. at 15:8-
 8 12, citing *Arthur J. Gallagher & Co. v. Tarantino*, 498 F. Supp. 3d 1155, 1171
 9 (N.D. Cal. 2020). They have not. It is "Plaintiff's burden to describe the subject
 10 matter of [its] trade secret(s) with sufficient particularity to separate [them] from
 11 matters of general knowledge in the trade or of special persons who are skilled in
 12 the trade." *Race Winning Brands, Inc. v. Gearhart*, No. SACV 22-1446-FWS-
 13 DFM, 2023 WL 4681539, at *4 (C.D. Cal. April 21, 2023) (internal citation
 14 omitted). As Ms. Lee noted in her Motion, Plaintiffs "may not simply rely upon
 15 'catchall' phrases or identify categories of trade secrets Plaintiffs intend to pursue at
 16 trial." *Vendavo*, 2018 WL 1456697, at *4 (internal citations omitted); *see also*
 17 *Masimo Corp. v. Apple Inc.*, No. SACV 20-48 JVS (JDEX), 2020 WL 4037213, at
 18 *4 (C.D. Cal. June 25, 2020).

19 Plaintiffs' alleged "Technical Trade Secrets" allegations consist of broad
 20 categories that fail to meaningfully define the trade secrets at issue and fail to
 21 separate the various items from matters of general knowledge in the trade.
 22 Plaintiffs' alleged "Economic Trade Secrets," which Plaintiffs do not even address
 23 in their Opposition, are even less specific. As the listed categories provide no
 24 indication of what constitutes Plaintiffs' trade secrets, they cannot support a claim.
 25 *See Race Winning Brands*, 2023 WL 4681539, at *5; *see also Space Data Corp. v.*
 26 *X*, No. 16-cv-03260-BLF, 2017 WL 5013363, at *2 (N.D. Cal. Feb. 16, 2017);
 27 *Vendavo*, 2018 WL 1456697, at *3-4.

28 Moreover, and contrary to Plaintiffs' attempt to argue otherwise, the FAC

1 fails to allege that Ms. Lee personally misappropriated any of BirdDog's alleged
 2 trade secrets, as they must. *See* 18 U.S.C. § 1839(6); Cal. Civ. Code § 3426.1(b).
 3 As discussed in the Motion, the FAC fails to satisfy this element because it does not
 4 tie any specific "trade secret" to a specific misappropriation by Ms. Lee, and there
 5 are no factual allegations regarding how any alleged trade secret provided to Ms.
 6 Lee was disclosed or used by her personally. Ms. Lee specifically noted in her
 7 Motion certain allegations in the FAC, demonstrated that the allegations were
 8 entirely speculative, and that Plaintiffs had failed to allege any facts explaining
 9 Plaintiffs' belief that its trade secrets were misappropriated or even what trade
 10 secrets were misappropriated. Motion at 14, discussing FAC ¶¶ 64, 65. Ms. Lee
 11 understands that her Motion is not to dispute the facts at this juncture. Rather, she
 12 has demonstrated a pleading failure. The FAC's conclusory allegations of
 13 misappropriation fail to "raise a right to relief above the speculative level" and the
 14 claims are, therefore, properly dismissed. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
 15 544, 555 (2007).

16 **3. The Sixth Claim for Conversion Fails to State a Plausible** 17 **Claim Against Ms. Lee.**

18 Plaintiffs' claim for conversion arises solely from a partial payment for six
 19 contracts which the "Bolin Defendants" allegedly refused to refund following a
 20 contract dispute. In their Opposition, Plaintiffs do not dispute that the FAC does
 21 not allege who owned the funds at issue (BirdDog Australia or BirdDog
 22 Technology). Nor do Plaintiffs dispute that it was Bolin China who allegedly
 23 received the funds.³ Instead, Plaintiffs argue that there is a factual question of

24 ³ Plaintiffs continue to obfuscate their failure to identify the actions attributable to
 25 specific entities and individuals by asserting that they adequately plead a claim for
 26 conversion because "Ms. Lee does not challenge that more than \$3,000,000 in
 27 BirdDog funds were paid." Opp. at 17:24-25. That is entirely beside the point.
 28 Notably, and to the point, Plaintiffs do not state which party received the funds. Of
 course, as evidenced by the very contracts and payment information on which
 Plaintiffs' claims rely, it was only Bolin China that received the funds, not 2082,
 Mr. Lo, or Ms. Lee. This further demonstrates Plaintiffs' failure to adequately state
 a claim against Ms. Lee.

1 “what entity owns or controls the bank account where the funds were transmitted
 2 and whether and to what extent Ms. Lee and the other defendants exercise joint
 3 dominion and control over those funds or aided the entities that did.” Opp. at 18:5-
 4 8 (emphasis omitted). However, to the extent Plaintiffs have a good-faith basis for
 5 believing that Ms. Lee owned the bank account in question or has control over the
 6 funds (which Ms. Lee believes Plaintiffs do not and cannot), Plaintiffs must plead
 7 the relevant facts to support such an allegation, instead of mere legal conclusions.
 8 The FAC fails to do so and, on this basis alone, Plaintiffs’ conversion claim should
 9 be dismissed.

10 Plaintiffs also argue that their conversion claim is somehow sufficient as to
 11 Ms. Lee because the FAC includes “joint tortfeasor allegation[s].” Opp. at 18:3-4.
 12 Although not entirely clear, this is presumably a reference to Plaintiffs’ new
 13 “conspiracy” theory – an argument made in their Opposition but not actually
 14 alleged in the FAC. To the extent Plaintiffs now contend that Ms. Lee Ms. Lee
 15 engaged in a conspiracy to convert BirdDog Australia’s contractual payments to
 16 Bolin China, the FAC does not include any allegations to support such a claim.

17 Nor would Plaintiffs’ “joint tortfeasor” or “conspiracy” allegations state a
 18 plausible claim, even were such a theory alleged. On the one hand, Plaintiffs claim
 19 Ms. Lee is liable as a “primary participant” based on her alleged “individual
 20 wrongful acts,” which, according to Plaintiffs, “are set forth in exacting detail” in
 21 the FAC. Opp. at 19:9-11. On the other hand, however, Plaintiffs argue that they
 22 do not need to specify Ms. Lee’s individual wrongful acts because Ms. Lee’s
 23 liability stems from being a vaguely alleged “joint tortfeasor” with some other
 24 Defendant(s) with primary liability. Plaintiffs cannot have it both ways. The
 25 inherent contradiction and inconsistency of this argument demonstrates the
 26 hollowness of Plaintiffs’ conversion claim (and, indeed, all of their claims) against
 27 Ms. Lee personally.

28 Plaintiffs also contend that Ms. Lee’s reliance on *Lashify, Inc. v. Urb. Dollz*

1 *LLC*, No. CV 22-6148-GW-AFMX, 2022 WL 18278638 (C.D. Cal. Dec. 13, 2022),
 2 is “misplaced” because they have alleged “individual” actions she took apart from
 3 her role as an alleged officer of 2082 and falsely alleged officer of Bolin China.
 4 Opp. at 19:1-15, citing FAC ¶¶ 109, 115, 118. In fact, the FAC does not contain
 5 any such factual allegations – as opposed to conclusory allegations – as to Ms.
 6 Lee’s alleged individual involvement in the purported conversion, as the Paragraphs
 7 cited in Plaintiffs’ Opposition make clear. According to Plaintiffs, her liability, if
 8 any, is predicated on the alleged theft of payments made to Bolin China, which she
 9 allegedly had access to given her alleged role with 2082 and/or Bolin China. The
 10 allegations against her mirror those against the entity Defendants and, as such, are
 11 insufficient to state a claim against her. *See Lashify*, 2022 WL 18278638, at *8
 12 (dismissing claims against individually named officers where “the FAC does not
 13 include facts related to [their] individual wrongful acts, as opposed to the acts of
 14 Urban Doll.”); *Wolf Designs, Inc. v. DHR Co.*, 322 F. Supp. 2d 1065, 1072 (C.D.
 15 Cal. 2004) (“[c]ases which have found personal liability on the part of corporate
 16 officers have typically involved instances where the defendant was the ‘guiding
 17 spirit’ behind the wrongful conduct, . . . or the ‘central figure’ in the challenged
 18 corporate activity.”), quoting *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 524 (9th
 19 Cir. 1989).

20 Finally, and as explained in the Motion, as the allegations of conversion
 21 sound in fraud, Plaintiffs also fail to meet the stricter requirement of specificity
 22 under Rule 9(b). Plaintiffs argue they do not need to plead this claim or their other
 23 claims with specificity under Rule 9(b) because their claims do not rely “entirely on
 24 a unified fraudulent course of conduct.” Opp. at 24:13-14. Yet, Plaintiffs offer no
 25 argument or explanation how their allegations are not founded on “a unified
 26 fraudulent course of conduct.” For example, the FAC expressly alleges that
 27 Defendants “devised a plan to convince BirdDog to entrust them with its funds and
 28 highly confidential information, hold and brazenly misuse and misappropriate those

1 funds and highly sensitive information to apply pressure on BirdDog, create
 2 competing cameras and steal BirdDog’s clients and economic relationships for
 3 themselves,” and that Defendants employed “a deliberate and unlawful strategy . . .
 4 all the while concealing their real and true intent.” FAC ¶ 5. *See also id.* ¶ 54
 5 (“they never had any intent of complying with their obligations under these related
 6 transactions”), *id.* ¶ 106 (alleging Defendants “knowingly, intentionally and in bad
 7 faith induc[ed] BirdDog to agree to pay millions of dollars to Bolin when Bolin
 8 never intended to provide what BirdDog was entitled to receive in exchange.”).
 9 Plaintiffs even suggest in their Opposition that the conduct complained of
 10 constitutes theft by “false pretenses.” Opp. at 17:19-20. Thus, there can be no
 11 dispute that Plaintiffs’ allegations sound in fraud and are subject to Rule 9(b).

12 Plaintiffs cannot meet that standard. The FAC fails to plead key facts within
 13 Plaintiffs’ knowledge, such as which BirdDog entity was involved or paid the
 14 partial payment, which individual or entity made the allegedly fraudulent
 15 representations to induce Plaintiffs to enter into contracts, which individual or
 16 entity was a party to the contracts, which individual or entity received Plaintiffs’
 17 partial payment under the contracts, or which individual or entity is obligated to
 18 perform under the contract. Accordingly, Plaintiffs’ allegations are insufficient.

19 Moreover, because this claim necessarily depends on a threshold breach of
 20 contract, which Plaintiffs fail to properly plead against 2082 (*see* Dkt. 47-1), the
 21 FAC fails to allege facts that show that the alleged retention of the payments by any
 22 party was wrongful. For all of these reasons, this claim does not meet the necessary
 23 pleading requirements – much less the heightened requirements of Rule 9(b) – nor
 24 can it as to Ms. Lee.

25 **4. The Seventh Claim for Violation of Penal Code Section 496** 26 **Fails to State a Plausible Claim Against Ms. Lee.**

27 Like their conversion claim, Plaintiffs fail to allege facts sufficient to state a
 28 claim for violation of Penal Code Section 496. For example, Plaintiffs do not

1 allege which entity induced which BirdDog entity to enter into the six contracts by
 2 false pretenses (though the contracts themselves make clear that it could only
 3 allegedly be Bolin China), or which entity received or had possession of the funds
 4 (though the purchase orders make clear that it could only be Bolin China). To the
 5 extent Plaintiffs now contend Ms. Lee “aid[ed] in concealing . . . or withholding
 6 any property from the owner, knowing the property to be so stolen or obtained”
 7 (Opp. at 18:15-17), this theory is not actually alleged in the FAC. See FAC ¶¶ 112-
 8 116.

9 As with their conversion claim, Plaintiffs also argue that Ms. Lee can be
 10 liable under Section 496 to the extent she controls or has dominion over the funds
 11 paid by BirdDog Australia to Bolin China. Opp. at 18:3-18. The FAC, however,
 12 does not allege any facts supporting these theories. Plaintiffs must allege facts that
 13 plausibly support this legal conclusion, instead of alleging – or, worse yet, arguing
 14 in their Opposition without ever alleging in their Complaint – the bare legal
 15 conclusion itself. Unsupported, conclusory allegations are rampant in Plaintiffs’
 16 FAC, and they are insufficient to state a claim, particularly against an individual
 17 like Ms. Lee who is being accused of a serious Penal Code violation.

18 **5. The Eighth Claim for Money Had and Received Fails to** 19 **State a Plausible Claim Against Ms. Lee.**

20 Plaintiffs do not and cannot dispute that a necessary element for a money had
 21 and received claim is that the “defendant received money.” *Maksoud v. Hopkins*,
 22 No. 17-CV-00362-H-WVG, 2018 WL 5920036, at *8 (S.D. Cal. Nov. 13, 2018).
 23 In their Opposition, Plaintiffs fail to identify any alleged facts that demonstrate that
 24 Ms. Lee received Plaintiffs’ money or had control over Plaintiffs’ money. To the
 25 contrary, Plaintiffs essentially acknowledge that they fail to allege these essential
 26 facts, arguing that they are “factual question[s] that cannot be adjudicated on a
 27 motion to dismiss.” Opp. at 18:3-5. That these supporting facts are allegedly
 28 unknown to Plaintiffs demonstrates that Plaintiffs have absolutely no basis to assert

1 this claim against Ms. Lee in the first place.

2 Plaintiffs' reliance on *Brown v. Grimes*, 192 Cal. App. 4th 265 (2011), only
3 highlights how misplaced this claim is with respect to Ms. Lee individually. In that
4 case, the Court stated that a money had and received claim "will only lie where
5 there has been a total breach – *i.e.*, total failure of consideration or repudiation of
6 the contract." *Id.* at 281. Ms. Lee, of course, was not a party to any contract with
7 Plaintiffs and is not alleged to have personally breached any such contract. Thus,
8 the alleged repudiation of a contract by Bolin China or by any other entity cannot
9 form the basis for a claim against Ms. Lee personally.

10 Plaintiffs fail to state a claim of money had and received against Ms. Lee
11 with facial plausibility, much less with the requisite specificity.

12 **6. The Ninth Claim for Intentional Interference Fails to State a**
13 **Plausible Claim Against Ms. Lee.**

14 Plaintiffs' Opposition fails to identify any factual allegations that show "(1) a
15 specific economic relationship between the plaintiff and some third person
16 containing the probability of future economic benefit to the plaintiff; (2) knowledge
17 by defendant of the existence of the relationship; (3) intentional acts on the part of
18 the defendant designed to disrupt the relationship; (4) actual disruption of the
19 relationship; and (5) damages proximately caused by the defendant's acts." *UMG*
20 *Recs., Inc. v. Global Eagle Enter., Inc.*, 117 F. Supp. 3d 1092, 1116 (C.D. Cal.
21 2015). The allegations Plaintiffs identify merely show that BirdDog generally has
22 customers and generally conducts business. FAC ¶¶ 24-26, 28, 122. They do not
23 identify any specific economic relationship with any specific customers involving
24 the cameras order pursuant to the six alleged contracts, much less how BirdDog had
25 a probability of future economic benefit from those relationships. Similarly,
26 although the FAC alleges that BirdDog may have had general discussions about its
27 customers with Ms. Lee (*id.* ¶¶ 36, 40, 123),⁴ it does not allege facts which would

28 ⁴ Plaintiffs also identify paragraphs 55, and 64-67 of the FAC as allegations that
{267016.4}

1 show that Ms. Lee had knowledge of the specific relationships that were allegedly
 2 disrupted as required. The FAC alleges that Bolin China entered into contracts with
 3 BirdDog (*id.* ¶¶ 40-67, 124), but not how Ms. Lee herself disrupted any specific
 4 economic relationships.

5 Plaintiffs do not plead any facts specifically as to Ms. Lee or, indeed, as to
 6 any Defendant. The entire crux of Plaintiffs’ interference claims against Ms. Lee is
 7 that she is interchangeable with Bolin China, 2082, and Mr. Lo, and that they all
 8 acted “in concert” as part of an alleged “brazen scheme” to breach Bolin China’s
 9 contracts with BirdDog Australia, and, therefore, the acts of all Defendants can and
 10 should be imputed to her personally. This is not supported by the law or by the
 11 facts alleged. As discussed above, the FAC does not allege any conspiracy on the
 12 part of Ms. Lee and others to have Bolin China breach its alleged contracts with
 13 BirdDog Australia. At a minimum, Plaintiffs must allege that Ms. Lee personally
 14 did something to interfere with Plaintiffs’ prospective economic relationships to
 15 justify a claim against her personally. They do not and they cannot. Plaintiffs
 16 cannot dispute that their FAC suffers from the defects identified in Ms. Lee’s
 17 Motion.

18 Thus, Plaintiffs’ claim for intentional interference with prospective economic
 19 advantage against Ms. Lee fails.

20 **7. The Tenth Claim for Violation of the UCL Fails to State a** 21 **Plausible Claim Against Ms. Lee.**

22 In their Opposition, Plaintiffs make no effort to distinguish *Linear*
 23 *Technology Corp. v. Applied Materials, Inc.*, 152 Cal. App. 4th 115 (2007), which
 24 held that “a corporate plaintiff may not rely on the UCL” to bring an action “based
 25 on contracts not involving either the public in general or individual consumers who
 26 are parties to the contract.” *Id.* at 135. Instead, Plaintiffs merely assert that

27
 28 supposedly show Ms. Lee had knowledge of specific economic relationships, but
 these paragraphs contain no relevant facts as opposed to conclusory allegations.

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1 “BirdDog *is* a customer of Defendants.” Opp. at 22:6-7 (emphasis in original).
 2 This is a non sequitur. *Linear Technology* does not permit a corporate plaintiff to
 3 bring a UCL action based on a breach of contract merely by styling itself as a
 4 “customer.” As explained in *Linear Technology*, the UCL was enacted to protect
 5 “powerless, unwary consumers,” as opposed to “sophisticated corporate
 6 customers.” *Linear Tech.*, 152 Cal. App. 4th at 135. Indeed, the *Linear*
 7 *Technology* court affirmed the dismissal of a UCL claim by “corporate customers,”
 8 like Plaintiffs here, which alleged misrepresentations in connection with purchase
 9 orders. *Id.* *Linear Technology* is directly analogous and, because Plaintiffs are
 10 basing their UCL claim on the six purchase orders, this claim should be dismissed.

11 Plaintiffs also argue that their UCL claim should survive dismissal because it
 12 is based on an alleged violation of Penal Code Section 496 by Ms. Lee and others.
 13 But, as explained above, Plaintiffs’ Penal Code Section 496 claim is nothing more
 14 than an improper repackaging of their breach of contract claim. Plaintiffs cannot
 15 evade the rule established in *Linear Technology* through improper pleading.
 16 Further, as explained above, Plaintiffs fail to state a claim against Ms. Lee for
 17 violation of Penal Code Section 496 and, therefore, this derivative UCL claim
 18 should be dismissed for the same reasons.

19 **B. Plaintiffs’ Sixth Through Tenth Claims for Relief Against Ms. Lee**
 20 **Are Barred by the Economic Loss Rule.**

21 In the Motion, Ms. Lee demonstrated that Plaintiffs’ numerous extra-
 22 contractual claims should be dismissed from this commercial contract dispute. In
 23 response, Plaintiffs first argue that an exception to the economic loss rule applies to
 24 their conversion claim. Opp. at 23:8-17. Plaintiffs are wrong and the caselaw on
 25 which they rely does not support this assertion. Notably, Plaintiffs do not even
 26 address the on-point caselaw cited in the Motion. For example, in *Motivo*
 27 *Engineering, LLC v. Black Gold Farms*, No. 2:22-CV-01447-CAS-JCx, 2022 WL
 28 3013227 (C.D. Cal. June 27, 2022), this Court dismissed a conversion counterclaim

1 under the economic loss rule where the defendant’s ownership interest in the
 2 converted property arose solely from the agreement at issue in the case. *Id.* at *4.
 3 Many other courts have similarly barred conversion claims under the economic loss
 4 rule. *See. e.g., Amuchie v. JPMorgan Chase Bank N.A.*, No. 2:22-CV-07621-AB-
 5 JPR, 2023 WL 2559201, at *4 (C.D. Cal. Feb. 9, 2023); *Expedited Packages, LLC*
 6 *v. Beavex Inc.*, No. CV 15–00721 MMM (AGRx), 2015 WL 13357436, at *4 (C.D.
 7 Cal. Sept. 10, 2015) (“[A] conversion claim seeking the \$800,000 plaintiffs are
 8 allegedly owed under the contract would arise entirely from the contract itself, and
 9 be barred by the economic loss rule.”); *Baggett v. Hewlett-Packard Co.*, No. SACV
 10 07-0667 AG (RNBx), 2009 WL 3178066, at *3 (C.D. Cal. Sept. 29, 2009) (holding
 11 that because plaintiff’s relationship with defendant “arises solely out of their
 12 contract and commercial transaction,” “the economic loss rule applies to bar
 13 Plaintiff’s tort claims for conversion and trespass to chattels.”).

14 Although Plaintiffs suggest their conversion and interference claims are
 15 “independent” of their contract claim and, therefore, not barred, they make no effort
 16 to support this contention. They cannot. Plaintiffs simply cannot dispute that the
 17 factual allegations underlying their breach of contract, conversion, and interference
 18 claims are identical. Therefore, Plaintiffs’ claims are barred by the economic loss
 19 rule.

20 Plaintiffs also argue that the economic loss rule does not apply to their Penal
 21 Code and money had and received claims because these are not tort claims. *Opp.* at
 22 23:18-25. Once again, Plaintiffs are wrong, and their argument has no basis in law.

23 To begin with, the cases Plaintiffs cite in support of this argument say
 24 nothing about the application of the economic loss rule to Section 496 or to a
 25 money had and received claim. Plaintiffs do not cite to any authority for any
 26 exception to the economic loss rule for claims based on purported statutory
 27 violations or actions based on an implied contract. Plaintiffs’ Penal Code and
 28 money had and received claims are nothing more than a recasting of their claim for

1 conversion and, as such, they are subject to the economic loss rule. *See* FAC ¶¶
 2 109-110, 115, 118-119, 128-129. The damages sought for these claims are the
 3 same damages sought in connection with Plaintiffs’ breach of contract claim, the
 4 alleged \$3,060,883.10 paid pursuant to the contracts. *See id.* To allow these claims
 5 to proceed, whether styled as a tort or a statutory violation, would allow Plaintiffs
 6 to improperly turn this commercial breach of contract case into something else
 7 contrary to California law. *See, e.g., United Guar. Mortg. Indem. Co. v.*
 8 *Countrywide Fin. Corp.*, 660 F. Supp. 2d 1163, 1180 (C.D. Cal. 2009) (noting
 9 economic loss rule “is particularly strong when a party alleges ‘commercial
 10 activities that negligently or inadvertently [went] awry’”), quoting *Robinson*
 11 *Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 991, n.7 (2004).

12 Plaintiffs also contend that their claims against Ms. Lee individually are not
 13 barred by the economic loss rule because they have not brought a breach of contract
 14 claim against her personally. Opp. at 23:26-24:2. This contention is disingenuous
 15 given the FAC’s allegations of Ms. Lee’s supposed “management” of 2082 and
 16 Bolin China, along with a vague “joint tortfeasor” allegation that, at all relevant
 17 times, Ms. Lee “was acting as an agent, alter ego, servant, employee, joint
 18 tortfeasor or representative of all other Defendants,” including 2082 and Bolin
 19 China. *See* FAC ¶ 16. On the one hand, Plaintiffs claim Ms. Lee has control and
 20 domination over the corporate Defendants and should somehow be individually
 21 liable for the corporate Defendants’ alleged actions and, on the other hand, they
 22 argue their claims are not barred because she is separate from the corporate
 23 Defendants. Plaintiffs’ reasoning is circular and illogical. As explained in the
 24 Motion, because the tort claims against Ms. Lee are duplicative of the claims
 25 against 2082 and Bolin China, and are mere extensions of the contract claims
 26 against 2082 and Bolin China, they should be barred to the same extent they would
 27 be barred as against 2082 and Bolin China.

28 Accordingly, the economic loss rule bars Plaintiffs’ sixth through tenth

1 claims for relief against Ms. Lee.

2 **III. CONCLUSION**

3 For all of the reasons set forth herein, and for the reasons set forth in her
4 Motion, Ms. Lee requests that the Court dismiss all of the claims for relief in the
5 FAC against her for failure to state a claim.

6
7 Dated: February 26, 2024

UMBERG ZIPSER LLP

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Moving Defendants, certifies that this brief contains 5,927 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 26, 2024

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